

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LUIS RAMON RAMIREZ,

Petitioner,

v.

No. 1:21-cv-00979-KWR-KRS

CENTRAL NEW MEXICO CORRECTIONAL
FACILITY *Warden*, and
ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD"), filed March 9, 2023. (Doc. 17). The PFRD notified the parties of their ability to file objections within fourteen (14) days and that failure to do so waived appellate review. (*Id.* at 13). To date, the parties have not filed any objections and there is nothing in the record indicating that the proposed findings were not delivered.

The PFRD proposed the Court find that Petitioner has filed a mixed petition containing both exhausted and unexhausted claims. (*See* Doc. 17). Specifically, the Magistrate Judge found that Petitioner exhausted the following claims: ineffective assistance of counsel based on trial counsel's alleged conduct of discouraging Petitioner and his brother, Alejandro Ramirez, from testifying during Petitioner's trial (Sub-Claim 1(b)), sufficiency of the evidence to support Petitioner's convictions (Claim 2), and improper jury instructions (Claim 3). (*Id.* at 9). The Magistrate Judge found Petitioner's remaining claim – Sub-Claim 1(a) for ineffective assistance

of counsel based on trial counsel's alleged failure to seek suppression of evidence – was unexhausted. (*Id.*)

The PFRD recommended that Petitioner be given thirty (30) days after an order adopting the PFRD to voluntarily dismiss his unexhausted claim and proceed on his remaining claims. (*Id.* at 12). The PFRD further recommended advising Petitioner that if he did not voluntarily dismiss his unexhausted claim, the Court would dismiss his entire petition without prejudice. (*Id.*).

On March 31, 2023, the Court received a letter from Petitioner confirming receipt of the PFRD, and requesting the Court “dismiss [his] unexhausted claims and proceed with the exhausted claims.” (*See* Doc. 19 at 1).

IT IS HEREBY ORDERED that:

1. The PFRD (**Doc. 17**) is **ADOPTED**.
2. Petitioner's request to dismiss his unexhausted claim, Sub-Claim 1(a), is **GRANTED**, and Sub-Claim 1(a) is **DISMISSED WITHOUT PREJUDICE**.
3. Respondent is hereby ordered to file a supplemental answer addressing the merits of Petitioner's exhausted claims by **May 3, 2023**.

IT IS SO ORDERED.


KEA W. RIGGS
UNITED STATES DISTRICT JUDGE